

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of S. P. HAILE, Minor.

UNPUBLISHED

June 12, 2014

No. 319313

Wayne Circuit Court

Family Division

LC No. 12-508894

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Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her minor child.<sup>1</sup> Respondent's rights were terminated pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (3)(g) (failure to provide proper care or custody), and (3)(j) (reasonable likelihood that child will be harmed if returned to parent). Finding no errors warranting reversal, we affirm.

**I. BASIC FACTS AND PROCEDURAL HISTORY**

In July 2012, respondent was seen walking down the street, holding the child and what appeared to be a gun, threatening to kill herself or someone else. When officers made contact with respondent at her apartment, they found a toy gun on a table. The child was in her pack-n-play, which was crowded with blankets and stuffed animals. Because of respondent's behavior, she was transported to a psychiatric ward where she voluntarily signed herself in. Respondent was diagnosed with schizoaffective disorder and hospitalized for 10 days.

The child and her siblings were made temporary wards in October 2012 due to respondent's failure to adequately address her mental health issues. Primarily, respondent failed to stay up-to-date on her medications. She was ordered to comply with her treatment plan, which required that respondent undergo psychological and psychiatric evaluations, undergo individual therapy, attend parenting classes, and maintain safe and suitable housing.

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<sup>1</sup> Respondent has two older children who were not named in the termination petition. One child was placed with his father and a relative was in the process of initiating a guardianship for the other child.

At an expedited November 27, 2012 review hearing, workers requested that respondent's visits be suspended due to her threatening conduct. On at least two occasions, respondent indicated that she would like to kill the workers and even suggested that she would "blow up the building." Respondent explained that one of the threats was the result of her witnessing a worker purposefully throw the child to the floor. Respondent was not seeing a psychiatrist and was only taking Xanax to sleep. Respondent's visits were suspended until she provided an updated psychiatric evaluation and demonstrated compliance with a treatment plan.

At the January 29, 2013 dispositional review hearing, respondent appeared by phone and indicated that she was living with her father in California. She had not provided any documentation that she was compliant with her mental health services, although she claimed to have attended a psychiatric evaluation while in California. Respondent refused to provide workers with contact information, stating that it was "none of their business." Respondent was ordered to provide workers with documentation that she was treating her mental health issues.

The termination hearing took place on May 24, 2013 before a referee, who recommended that respondent's parental rights be terminated. Respondent was not present at the hearing. Evidence revealed that in early February 2013, respondent came to the Department of Human Services (DHS) office to drop off paperwork. The paperwork included a form wherein respondent refused to sign a release of medical information. Respondent assaulted a staff member while she was there and was arrested. The referee noted that respondent had done nothing to comply with her case services plan. She had moved numerous times and had no proof of stable housing. She had not completed parenting classes or individual counseling and was not complying with mental health services. The referee attributed respondent's explosive behavior to her untreated mental health issues. The trial court adopted the referee's findings and recommendation.

However, respondent later moved to vacate the order, arguing that respondent had been in jail as a result of the altercation with the worker. Respondent had been ordered to have no contact with anyone at the office as part of her criminal proceeding. Respondent argued that the DHS had failed her by essentially giving up on her after the altercation. She never saw her child and was offered no additional services. The trial court granted respondent's motion to ensure that she was afforded due process.

A second termination hearing was held on November 12, 2013. Respondent was present. The trial court took judicial notice of the entire file, including the evidence from the first termination hearing. The caseworker testified that respondent called her in July 2013 to see what was happening with her case. Respondent was advised that her rights had been terminated and that she should contact her attorney. Having concluded that respondent received adequate notice of the proceedings, the trial court terminated her parental rights based on her lack of compliance with the treatment plan. The trial court also noted that the child was thriving in a pre-adoptive home.

Respondent now appeals as of right.

## II. ANALYSIS

“To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence.” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.” *In re White*, 303 Mich App 701; \_\_\_ NW2d \_\_\_ (2014), slip op p 4 (footnotes omitted).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The foster care worker testified that respondent did not comply with her mental health requirements because she did not provide any documentation of the medication she was taking, or undergo psychiatric treatment or individual therapy. Further, respondent was terminated from parenting classes on two separate occasions. Respondent received numerous referrals to programs designed to address her mental illness, but never took part in any of the services provided to her. Respondent continued to exhibit threatening behaviors against DHS employees on numerous occasions, at least one of which led to her arrest.

The only portion of the plan that respondent even remotely complied with was the requirement of parent visitation. Respondent attended 15 of 19 visits, but many of those were mired in respondent's threatening behavior and ended early, with calls being made to 911 on multiple occasions. Respondent's visits were ultimately suspended in October 2012 as a result of her behavior and respondent's continued failure to comply with the mental health portion of her service plan.

The trial court was within its right to find that the statutory bases were proven by clear and convincing evidence. The primary condition leading to adjudication – respondent’s untreated mental illness – continued to exist. Respondent was also without the ability to care for the child. She continued to struggle with mental illness, could not verify income, and did not have stable housing. Given respondent’s refusal to comply with court-ordered services, there was no reasonable likelihood that her situation would be improved within a reasonable time considering the child’s age. Finally, it is obvious that respondent’s violent and erratic behavior placed the child at risk of harm.

Having found the foregoing subsections proven by clear and convincing evidence, the trial court was required to terminate parental rights if “it finds from a preponderance of evidence on the whole record that termination is in the children's best interests. We review for clear error the trial court's determination regarding the children's best interests.” *White*, slip op p 6.

The child was young and had a high likelihood of being adopted. She was thriving in her pre-adoptive home. Further, respondent provided no indication that she would be able to provide the child with the type of stability and consistency she needs at such a young age. Respondent had an extensive history of mental illness-related hospitalizations, and had done very little to resolve or alleviate the problem. Respondent had left the state for a period of time during the proceedings, and had also been incarcerated. She had not visited with the child since October 2012. There was no evidence of any bond between respondent and the child.

Finally, we reject respondent’s claim that DHS violated her due process rights. This court reviews de novo a question of constitutional law. *In re B & J*, 279 Mich App 12, 18; 756 NW2d 234 (2008).

In support of respondent’s due process claim, she cites *In re B & J*, wherein two parents, who were illegally residing in the United States, were deported to Guatemala because DHS reported them to United States Immigration and Customs Enforcement. *Id.* at 15. DHS then attempted to terminate the parents’ rights under MCL 712A.19b(3)(g) because the parents’ deportation made it impossible for the parents to provide the children proper care and custody. *Id.* at 16-17. This Court held that DHS cannot “intentionally set out to create [the] very ground for termination” on which it relies because “the state may not set out with the overt purpose of virtually assur[ing] the creation of a ground for termination of parental rights,” and reversed the termination of the parents’ parental rights. *Id.* at 19 (alteration in original; internal quotation marks omitted).

Here, DHS did not create the ground for terminating respondent’s parental rights. Respondent was arrested because of her own threatening behavior toward agency employees. Respondent was even told that she could continue visitation with the child, pending proof of compliance with her court ordered mental health routine. Further, respondent received ample time to at least begin compliance with the court ordered service plan but had failed to undergo psychiatric evaluation, individual therapy, or parenting classes. She simply did not comply with her service plan and failed to rectify the mental health issues that originally led to the child being placed in custody.

Moreover, although respondent did not receive notice of the original termination hearing, the trial court vacated the original order and held an entirely new hearing on the termination of respondent's parental rights at which respondent was present. Respondent was afforded her due process rights.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Henry William Saad  
/s/ Kirsten Frank Kelly